

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHAEL W. SCHLAICK,

Plaintiff,

No. CIV S-04-0275 MCE GGH P

vs.

WARDEN CAREY, et al.,

Defendants.

FINDINGS AND RECOMMENDATIONS

Plaintiff is a state prisoner proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983. On September 8, 2005, defendant Dickinson filed a summary judgment motion. On September 21, 2005, the remaining defendants filed a separate summary judgment motion. On November 1, 2005, plaintiff filed a document titled "Opposition to Defendants Motion for Summary Judgment." While it is clear that plaintiff intends this opposition to address the summary judgment motion filed September 21, 2005, it is unclear whether plaintiff's opposition addresses defendant Dickinson's summary judgment motion. More importantly, the opposition is untimely if it is also addressed to defendant Dickinson's motion.

On April 10, 2006, the court granted plaintiff ten days to inform the court whether his November 1, 2005, opposition was intended to address defendant Dickinson's summary judgment motion and, if so, why the opposition should not be deemed untimely as to defendant

1 Dickinson's motion. Ten days passed and plaintiff did not respond to this order. Because  
2 plaintiff has failed to comply with the April 10, 2006, order, the court recommends that this  
3 action be dismissed.

4 Accordingly, IT IS HEREBY RECOMMENDED that this action be dismissed  
5 based on plaintiff's failure to comply with the April 10, 2006, order. See Local Rule 11-110;  
6 Fed. R. Civ. P. 41(b).

7 These findings and recommendations are submitted to the United States District  
8 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty  
9 days after being served with these findings and recommendations, any party may file written  
10 objections with the court and serve a copy on all parties. Such a document should be captioned  
11 "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections  
12 shall be served and filed within ten days after service of the objections. The parties are advised  
13 that failure to file objections within the specified time may waive the right to appeal the District  
14 Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

15 DATED: 5/17/06

/s/ Gregory G. Hollows

16  
17 \_\_\_\_\_  
GREGORY G. HOLLOWS  
UNITED STATES MAGISTRATE JUDGE

18 ggh:kj  
19 sch275.fr  
20  
21  
22  
23  
24  
25  
26